



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1383

Dear Mr. Douglas:

Your office previously asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. This request was assigned ID# 18621.

The Department of Public Safety (the "department") received an open records request from a department employee for the "interview notes of each person conducting the [Drivers License] interview board and a copy of the evaluation given on each of the candidates" who interviewed before the board for the position of sergeant. Your office contended the requested information comes under the protection of former sections 3(a)(2), 3(a)(11), and 3(a)(22) of the Open Records Act (now found at sections 552.102, 552.111, and 552.122, respectively, of the Government Code).

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin, 1983, writ ref'd n.r.e.). The information at issue pertains solely to the candidates' qualifications to serve as a public servant, and is therefore not private and is of legitimate public interest. See Open Records Decision No. 444 (1986). Section 552.102(a) was not intended to protect the type of information at issue here.

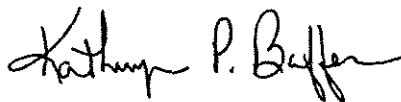
Section 552.122(b) of the Government Code protects a "test item developed by a licensing agency or governmental body." Your office submitted two types of records as responsive to the open records request. The "Oral Examination Report" is a form completed by an "interviewer" who rates each of the candidates on a scale from 0 to 500. Although the form contains a list of factors for the interviewers to consider in rating a candidate, these factors relate to the candidates' general personal characteristics. The second form lists each of the candidates who participated in the promotional examinations, their respective scores on the written and oral portions of the examinations, their composite scores, and other relevant information. Neither of these forms contain any information that could arguably be considered a "test item developed by a licensing agency or governmental body." See also Open Records Decision No. 626 (1994). Section 552.122(b) is inapplicable to the requested information.

It is not clear to us whether your office intended to assert that these records are protected under former section 3(a)(11). Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993), this office held that:

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

The records at issue clearly pertain solely to "routine . . . personnel matters" and as such do not come under the protection of section 552.111. Accordingly, the department must release these records in their entirety. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref.: ID# 18621

Enclosures: Submitted documents

cc: Mr. Danny Volcik
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(w/o enclosures)